

**REMARKS**

Entry of this Amendment and reconsideration are respectfully requested in light of the amendments made to the claims and the remarks made herein.

Claims 1-22 are pending and stand rejected. Claims 6 and 16 are objected to.

Claims 1, 6, 8, 11, 16, 18, 21 and 22 have been amended. No new matter has been added. Support for the amendments may be found on page 5, lines 12-17.

The examiner has objected to the specification as containing reference labels which are incorrect in that they do not correspond to the elements shown in the drawings.

Applicant wishes to thank the examiner for his observation and has made the suggested changes. Applicant believes that the specification, as amended, now correctly identifies and represents the elements shown in the drawings and respectfully requests that the objection be withdrawn.

Claims 6 and 16 are objected to as containing informalities.

Applicant wishes to thank the examiner for his observation and has made the suggested changes. Applicant believes that the referred-to claims, as amended, correct the informalities noted and respectfully requests that the objection be withdrawn.

Claims 1-10 are rejected under 35 USC §101 as being non-statutory subject matter as they allegedly describe an abstract idea that is not technologically embodied as being performed on a computer (MPEP 2106 IV.B1(b)). It is the examiner's position that the claims read on the mental steps of calculating a score that can be performed with pencil and paper or in one's head.

Applicant respectfully disagrees with, and explicitly traverses the examiner's reason for rejecting the claims. "Whoever invents or discovers any new and useful process, machine, manufacture ... or any new and useful improvement thereof, may obtain a patent therefore." 35 USC §101. Claim 1 recites a method for recommending items comprising the steps of obtaining a list, obtaining a recommendation score, calculating an adjustment to the recommendation score based on a consistency with which an item was selected and generating a combined recommendation score. Hence, claim 1 recites a new and useful process for recommending items. Contrary to the

examiner position, section 101 fails to recite that the process claimed must be performed on a computer system. Whether by computer system or by hand calculation, the recommendation of an item by a recommendation score and an adjustment to produce a new recommendation score is a useful process. Hence, practicing the steps recited in claim 1 whether by computer system or by hand calculation would be within the scope of the claims and such process would be deserving of a patent.

Furthermore, the examiner has referred to MPEP 2106 IV.B1(b) (Nonfunctional Descriptive Material) as the basis of the rejection. However, applicant would note that MPEP 2106 IV.B1 describes "nonfunctional descriptive material" as including but not limited to music, literary works and a compilation or mere arrangement of data. The process steps described in claim 1 are neither music, literary works or a mere arrangement of data, but steps that lead to a useful and tangible result.

Having shown that claim 1 includes subject matter that produces a useful result, applicant submits that the reason for the examiner's rejection has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard to independent claim 8, this claim recites an method similar to that recited in claim 1 and has been rejected by the examiner citing the same reference used in rejecting claim 1. Accordingly, the applicant's remarks made in response to the examiner's rejection of claim 1 are also applicable in response to the examiner's rejection of claim 8.

Accordingly, in view of the amendments made to claim 8 and the remarks made with regard to the rejection of claim 1, which are reasserted, as if in full, in response to the rejection of claim 8, applicant submits that the examiner's rejection of claim 8 has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claim.

With regard to claims 2-7 and 9-10, these claims depend from claims 1 and 8, respectively, which have been shown to be allowable. Accordingly, claims 2-7 and 9-10 are also allowable by virtue of their dependency upon an allowable base claim.

Claims 1-22 are rejected under 35 USC§102(b) as being anticipated by Herz (USP No. 5,758,257). It is the examiner's position that Herz discloses each and every element recited in the claims.

Applicant respectfully disagrees with, and explicitly traverses, the examiner's reason for rejecting the claims. However, in the interest of advancing the prosecution of this matter applicant has elected to amend the claims to more clearly state the invention. More specifically, applicant has amended the independent claims to recite that the consistency is a ratio of an item being selected by a user relative to the number of times the item was offered.

Herz, as read by applicant, discloses a system for scheduling the receipt of desired data based on customer profiles that are developed that describe characteristics of the data are that are important to the customer. The customer profiles are further updated when the customer profile fails to match the user selection (see col. 26, lines 60-67, [i]f the customer watched the predicted program then the customer profile is presumed accurate and no adjustment is made. Of course, the customer profile may be positively reinforced by varying the adjustment increment. However, if the customer did not watch the predicted video program, the customer profile ...is then adjusted.").

Anticipation requires the presence, in a single prior art reference disclosure, of each and every element of the claimed invention, *arranged as in the claim*. (emphasis added).

Herz fails to anticipate the present invention as Herz discloses updating the customer profile based on the user's selection but does not consider the number of times that the item was offered. Further, claim 1 for example, has been amended to recite that the consistency is a ratio of an item selected by the user relative to the number of times the items was offered.

Accordingly, Herz fails to teach subject matter recited in claim 1 and cannot be said to anticipate claim 1 because Herz does not disclose each and every element claimed.

Having shown that Herz fails to teach each and every element claimed, applicant submits that the reason for the examiner's rejection has been overcome and can no longer

be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard to independent claims 8, 11, 18, 21 and 22, these claims have been amended in a manner similar to the amendment made to claim 1 and have been rejected by the examiner citing the same reference used in rejecting claim 1. Accordingly, the applicant's remarks made in response to the examiner's rejection of claim 1 are also applicable in response to the examiner's rejection of claims 8, 11, 18, 21 and 22.

Accordingly, in view of the amendments made to the claims and the remarks made with regard to the rejection of claim 1, which are reasserted, as if in full, in response to the rejection of claims 8, 11, 18, 21 and 22, applicant submits that the examiner's rejection of claims 8, 11, 18, 21 and 22 have been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

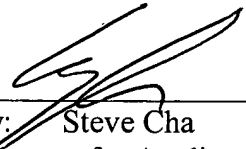
With regard to dependent claims 2-7, 9, 10, 12-17, 19 and 20, these claims ultimately depend from an allowable base claim. Accordingly, these claims are also allowable by virtue of their dependency from an allowable base claim.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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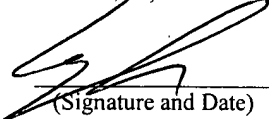
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